



## Statement of Senator Dianne Feinstein Opposing Military Commissions Bill

September 28, 2006

"I strongly believe we must give this President and all future Presidents the necessary tools to fight the war on terror. But that is not the question we are facing today.

Instead, we are being asked to consider legislation that will determine how our troops and personnel, foreign troops and personnel, as well as *innocent bystanders* will be treated when captured during conflict.

I truly believe that the choice we are making tonight tests our nation's commitment to the Constitution and the foundation of our justice system, and it also sends a message to other countries – a message that may ultimately dictate how Americans are treated when they are captured.

Americans on both sides of the aisle agree that terrorists should be brought to justice, they should be interrogated, and that information should be used to help prevent further bloodshed.

But we can – and must – do this in a way that is consistent with our values and the Constitution. This war must be won, but this bill is not the right way to do it.

The bill before the Senate is fundamentally flawed, and I urge my colleagues to oppose it. Here's why:

**First, it gives the President expansive, unilateral powers.** The bill before the Senate gives the President express new powers to interpret the meaning and authority of the Geneva Conventions, as well as new authority to establish military commissions beyond Guantanamo, in occupied territories or under martial law anytime 'circumstances so require.'

**Second, it creates ambiguous and vague definitions of torture and cruel and inhumane treatment.** The new bill defines 'torture' and 'cruel or inhuman treatment' using narrow and opaque definitions, so that it is not clear what interrogation techniques are off-limits.

Does the bill prevent simulated drowning, or induced hypothermia, or mock execution, or prolonged forced nudity? The language is vague. These tactics should be explicitly prohibited, just as they are in the Army Field manual.

The President said our officials need clear guidance, yet this bill fails to provide it – and I am concerned that this loophole will allow the CIA to continue using these techniques.

**Third, the legislation abandons independent judicial review.** Rather than using existing military courts, the bill creates a new ‘Court of Military Commission Review’ where appeals will be heard by judges who have been hand-picked by Secretary of Defense Rumsfeld.

**Fourth, it allows evidence secured through coercion.** For the first time in modern history, U.S. military tribunals will be free to admit evidence that was obtained through coercion in violation of our Constitution, so long as it was obtained before December 30, 2005.

This means that if an interrogation took place where an individual was physically abused, then whatever he said could be used to convict him.

**Fifth, it eliminates innocent people’s rights.** We know there have been people detained at Guantanamo Bay who were caught by being in the wrong place at the wrong time. Just a few weeks ago, we heard about the case of a man who was held at Guantanamo for years, even though he had never been a terrorist or a soldier.

So the key is to be able to separate the innocent from the guilty. One of the ways of doing it is through a process called habeas corpus, which allows an individual to challenge his detention. This is a bedrock of American law. And here, it is removed.

And just as importantly, moving away from the Uniform Code of Military Justice, which has served our nation so well for decades, would place our own American men and women in jeopardy.”

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